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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD144

Revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of draft revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy) for public review and comment. The revisions to the policy will improve enforcement consistency nationally, increase predictability in enforcement, improve transparency in enforcement, and more effectively protect natural resources.

DATES: The draft revisions to the Penalty Policy will remain available for public review until [Insert date 60 days after publication in the FEDERAL REGISTER]. To ensure that comments will be considered, NOAA must receive written comments by [Insert date 60 days after publication in the FEDERAL REGISTER].

ADDRESSES: Interested persons may submit comments by any of the following methods:

- Electronic Submissions: Submit electronic public comments to penaltypolicy@noaa.gov;
- Fax: 301-427-2211; Attn: Robert Hogan;

• Mail: Enforcement Section, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1315 East West Highway, SSMC-3-15424, Silver Spring, MD 20910, Attn: Robert Hogan.

The draft revisions to the Penalty Policy are available electronically at the following Web site: <http://www.gc.noaa.gov/documents/enforcement/draft-penalty-policy.pdf>

Commenters may also request a hard copy of the draft revisions to the Penalty Policy by sending a self-addressed envelope (size 8.5 x 11 inches) to the street address provided above. Comments submitted in response to this notice are a matter of public record. Before including an address, phone number, e-mail address, or other personal identifying information in a comment, please be aware that comments—including any personal identifying information—can and will be made publicly available. While a request can be made to withhold personal identifying information from public review, NOAA cannot ensure that it will be able to do so.

FOR FURTHER INFORMATION CONTACT: Robert Hogan at the above address or by telephone at 301-427-8283.

SUPPLEMENTARY INFORMATION: The draft revisions to the Penalty Policy are intended to provide updated guidance for the assessment of civil administrative penalties and permit sanctions under the statutes and regulations enforced by NOAA. As explained more fully in the text of the Penalty Policy, the purpose of the Policy is to ensure that: (1) Civil administrative penalties and permit sanctions are assessed in accordance with the laws that NOAA enforces in a fair and consistent manner; (2) penalties and permit sanctions are appropriate for the gravity of the violation; (3) penalties and permit sanctions are sufficient to deter both particular violators and the regulated community from committing violations; (4) economic incentives for

noncompliance are eliminated; and (5) compliance is expeditiously achieved and maintained to protect natural resources.

Under the draft revisions to the Penalty Policy, NOAA expects to continue to improve consistency at a national level, provide greater predictability for the regulated community and the public, improve transparency in enforcement, and more effectively protect natural resources.

The major changes to the existing Penalty Policy made by this draft revision include:

- (1) Addition of more detail in some penalty schedules to better describe the most commonly-occurring violations;
- (2) Clearer distinctions among multiple-level violations to ensure consistent application of the Penalty Policy;
- (3) Revision of the treatment of prior violations so that prior adjudicated violations older than 5 years are no longer considered an aggravating factor;
- (4) Ensuring consistent application of the Penalty Policy to recreational offenses by replacing the commercial/recreational distinction as a penalty adjustment factor with additional Level I and II penalties that capture recreational violations;
- (5) Creating a new penalty adjustment for “such other matters as justice may require” by combining the “Activity After Violation” factor with new considerations.

When finalized, the revised Penalty Policy will supersede the previous Penalty Policy regarding the assessment of penalties or permit sanctions, and previous penalty and permit sanction schedules issued by the NOAA Office of the General Counsel. This Penalty Policy provides guidance for the NOAA General Counsel’s Office in assessing penalties but is not intended to create a right or benefit, substantive or procedural, enforceable at law or in equity, in

any person or company. NOAA retains discretion to assess the full range of penalties authorized by statute in any particular case.

The full draft revisions to the Penalty Policy, along with examples, matrixes, and schedules, can be found at <http://www.gc.noaa.gov/documents/enforcement/draft-penalty-policy.pdf>. NOAA is seeking public comment on all portions of the Penalty Policy, but specifically asks for comment on the above identified major changes to the existing Penalty Policy.

Dated: February 21, 2014.

Benjamin Friedman,

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